

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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SMART DENTURE CONVERSIONS, LLC: 24-cv-507 JCB  
:  
vs. :  
:  
STRAUMANN USA, LLC :  
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TRANSCRIPT

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Motion Hearing held before the  
Honorable J. Campbell Barker, USDC  
Judge held via teleconference on the 13th  
day of November 2024 at 11:13 a.m.

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1                   THE COURT: We're here this morning  
2                   for a hearing on the motion to dismiss in  
3                   case number 124 CV 507 in the District of  
4                   Delaware, Smart Denture Conversions versus  
5                   Straumann, U.S.A.

6                   Can I have the counsel for the  
7                   parties make their appearances, please?

8                   MR. CHAPMAN: In your courtroom,  
9                   Your Honor, Mark Chapman for defendant  
10                  Straumann.

11                  THE COURT: Thank you.

12                  MR. NIX: Good morning, Your Honor.  
13                  This is Kelsey Nix for the plaintiff and also  
14                  with me on the line are Delaware local  
15                  counsel Fred Cottrell from the Richards,  
16                  Layton, Finger firm and my colleague from  
17                  Smith Anderson and co-counsel, Hope Garber.

18                  THE COURT: All right. Good morning  
19                  to you all.

20                  MR. CHAPMAN: And, Your Honor, I  
21                  should add that my colleague, Georg  
22                  Reitboeck, is on the line, as well as our  
23                  local Delaware counsel, Nathan Hoeschen, of  
24                  Shaw Keller.

25                  THE COURT: Good morning to you as

1 well.

2 Well, Mr. Chapman, since this is your  
3 motion, would you like to begin with your  
4 presentation?

5 MR. CHAPMAN: Certainly. Thank you.

6 May it please the Court. Defendant,  
7 Straumann, has moved to dismiss plaintiff's  
8 complaint under Rule 12(b)(6) because the  
9 claims of the asserted patent are indefinite.

10 The claims are indefinite because  
11 they're hybrid claims. They cover an  
12 apparatus, a dental system, but they also  
13 include a method step.

14 This method step requires a dentist  
15 using the dental system to apply an axial  
16 force during the procedure and this axial  
17 force to release the temporary screw from the  
18 abutment.

19 And because of this method step, it's  
20 unclear whether infringement occurs when the  
21 dental system is made or sold or only when  
22 someone actually uses the dental system,  
23 including applying this force that releases  
24 the temporary screw. As a result, because of  
25 that uncertainty, the claims are indefinite.

1                   And what I wanted to do this morning  
2 was this doctrine, this hybrid claim,  
3 indefiniteness doctrine, is based on a line of  
4 federal circuit cases, beginning with the IPXL  
5 decision, and I wanted to briefly discuss the  
6 case law and then look at the claim language  
7 of the patent in this case.

8                   So the take away from the cases is  
9 that an apparatus claim is indefinite if it  
10 includes a limitation that requires a user of  
11 the apparatus to perform some action.

12                  So, in IPXL, for example, the claims  
13 were indefinite because the limitation  
14 required a user of the electronic financial  
15 transaction system to use the input means to  
16 change the predicted transaction information  
17 or accept the displayed transaction.

18                  In the Katz case, the claims were  
19 indefinite because they required a user, the  
20 caller of the telephone interphase system, to  
21 digitally enter data. And in the Hamilton  
22 Beach case, which, of course, is a case from  
23 the District of Delaware, the claims were  
24 indefinite because they required a user to  
25 insert brew baskets into the claimed average

1 brewing machine and to cause that machine to  
2 heat the water.

3 Now, the plaintiff has cited cases  
4 that hold that an apparatus claim is not  
5 indefinite if the limitation merely describes  
6 a capability or a configuration of the  
7 apparatus as opposed to requiring a user to  
8 perform an action.

9 So, for example, in the Master Mine  
10 case which was prominently cited in the  
11 plaintiff's opposition brief, the claims were  
12 not indefinite because the limitation  
13 described capabilities of the reporting module  
14 of the software application; namely, that it  
15 presents a set of user selectable database  
16 fields that it receives from the user a  
17 selection and that it generates a database  
18 clearly.

19 Similarly, in the Ultimate Pointer  
20 case the claims were not indefinite because  
21 the limitation described the capability of the  
22 image sensor of the handheld pointing device.

23 THE COURT: So, Mr. Chapman, can I  
24 ask regarding the Master Mine case, is the  
25 distinction you are drawing that the claim

1 language there had the subject of the verb,  
2 the action verb being the reporting module  
3 and it stated the reporting module receives  
4 from the user certain information and you  
5 think that the result would be different if  
6 the claim language instead presented the user  
7 as the subject and said the user provides.

8 So there is a difference between a  
9 module, an inanimate object receiving  
10 something, which was found there to be a  
11 system or a capability and a user providing  
12 the same thing which your argument falls on  
13 the indefiniteness side of the line.

14 MR. CHAPMAN: Yes. I think if you  
15 look at these cases and I was going to get to  
16 the ultimate point here, but that is exactly  
17 right.

18 I think when the claims are directed  
19 to what the user has to do, the user has to  
20 perform some action, they fall within the  
21 scope of this doctrine and they are  
22 indefinite. Indefinite.

23 We see that in IPXL. We see it in  
24 Katz. We see it in Hamilton Beach.

25 On the other hand, if the claim is

1                   describing what the machine is doing in  
2                   particular with respect to Master Mine, this  
3                   reporting module, then it is not indefinite  
4                   because you are just describing the capability  
5                   or configuration of the apparatus itself.

6                   THE COURT: And do you think there  
7                   has been any drift in the federal circuit's  
8                   treatment of this issue over time because I  
9                   do notice that your primary cited cases are  
10                  from 2005, 2011 and 2011 again. Whereas, the  
11                  plaintiff is relying on Master Mine, which  
12                  was 2017, HTC, which was 2012 and Ultimate  
13                  Pointer, which was 2016, all of which come  
14                  after your cited cases.

15                  Do you think there has been any  
16                  drift?

17                  MR. CHAPMAN: I don't think that  
18                  there has been a drift. I think what matters  
19                  is what does the specific claim language at  
20                  issue say.

21                  THE COURT: Do you have any cases  
22                  from 2012 onward where the federal circuit  
23                  found claim language indefinite because of  
24                  this distinction between the user or a human  
25                  being factor and a machine being the subject

1                   of the verb?

2                   MR. CHAPMAN: I think the latest  
3                   cases are the ones from 2011. I think it's  
4                   the Katz case and Rembrandt.

5                   THE COURT: Right. And I see you  
6                   have some district court cases going that way  
7                   like the 2015 coffee machine or beverage  
8                   machine case.

9                   Go ahead.

10                  MR. CHAPMAN: That's fine. I  
11                  appreciate that.

12                  I think where I was was I was just  
13                  making my way through the cases and I just  
14                  wanted to touch upon one more case which the  
15                  plaintiff cited and that is the Arthrodesis  
16                  case. Again, this is a case where the Court  
17                  found that the claims were not indefinite  
18                  because they fall on the side of the cases  
19                  where the limitation is merely describing how  
20                  the apparatus or component of it is  
21                  configured.

22                  This is the one with the jig arm  
23                  component and the jig base component. Again,  
24                  if you look at the claim language is that  
25                  which will be positioned.

1                           THE COURT: That seems like an easy  
2 one because it's future tense, so if that is  
3 not describing a capability that can never be  
4 infringed.

5                           MR. CHAPMAN: Correct. So,  
6 obviously, the issue presented by this motion  
7 is which side of the line do the claims in  
8 this case fall.

9                           And our submission is that claims are  
10 indefinite because the limitation in this case  
11 requires the user of the dental system to  
12 perform an action; namely, the dentist who is  
13 using the system has to apply the axial force  
14 that causes the temporary screw to release  
15 from the abutment.

16                          And I will just turn to my first  
17 slide here just to show you the claim language  
18 from claim one.

19                          Now, there is two independent claims  
20 in the patent. Claim one and claim number  
21 nine.

22                          Claim one, as you see it, recites a  
23 dental system comprising four components, an  
24 implants abutment, a definitive screw, a  
25 coping and a temporary screw.

1                   And then at the end of the claim is  
2 the limitation that's at issue in the motion.  
3 And this limitation requires an axial force to  
4 release the coping and the temporary screw  
5 from the implant abutment. And it also states  
6 that this axial force is from pick-up  
7 processing.

8                   Now, pick-up processing, if you read  
9 the patent, it explains that that is the step  
10 in the denture conversion procedure where the  
11 dentist picks up the coping and the temporary  
12 screw from the patient's jaw to remove them  
13 from the abutment.

14                  I'm just going to move to the next  
15 slide to show you figures five and figure six.

16                  So the claim language in these  
17 figures, they are all in our brief, our  
18 opening brief. Figure five you can see that  
19 the temporary screw and the coping are  
20 connected to the implant abutment prior to the  
21 pick-up process, according to the  
22 specification. And then after the pick-up  
23 process, figure six shows the path of the  
24 temporary screw and this embodiment and the  
25 coping released from the implant abutment.

1           And you can see the two arrows show the force  
2           that the dentist is applying, the axial force,  
3           whether he or she is prying the denture off  
4           the patient's jaw.

5           And then the next slide, again, this  
6           is quoted in our opening brief, it's the  
7           associated passage from the specification  
8           which just repeats what I said, which is the  
9           prothesis and the coping and the temporary  
10          screw cap are pulled off as shown by the  
11          arrows in figure six.

12           So when the patent claim the first  
13          two pick-up processing, this is the act of the  
14          dentist picking up the coping which the  
15          temporary screw is then released from the  
16          abutment.

17           One more slide here on figure 75  
18          which our understanding is this is the  
19          embodiment of the patent that the patentee  
20          tried to cover with claims in this patent.  
21          Again, same idea that it is released from the  
22          abutment with axial force. Again, it's the  
23          dentist who is lifting this device off the  
24          patient's jaw.

25           So our submission is when you get

1           back to this limitation in claim one, it  
2        requires the dentist, the user of the system,  
3        to perform an act. He or she has to apply an  
4        axial force and that axial force has to  
5        release the coping of the temporary screw from  
6        the abutment.

7           And just very quickly, claim nine in  
8        the next slide, this is the other independent  
9        claim. Same basic structure. It's a dental  
10      system with the same four components and then  
11      you have this limitation at the end and,  
12      again, the limitation requires an axial  
13      pick-up force to release the temporary screw  
14      post from the implant abutment.

15           And, again, it states that the axial  
16      force is in response to -- the limitation  
17      states that this axial force is in response to  
18      and/or during pick-up processing.

19           So, again, just like claim one, our  
20      submission is that claim nine requires the  
21      user, the dentist, to use the system, apply  
22      the axial force during pick-up processing and  
23      that must release the temporary screw from the  
24      abutment.

25           And I think the way we look at this,

1           these are not limitations that merely describe  
2           a capability for a configuration of the screw.  
3           It would have been fine for the patentee to  
4           have drafted these limitations to have said,  
5           you know, that this is capable of this or  
6           configured to do this.

7           You know, a temporary screw capable  
8           of being released upon the application of an  
9           axial force, et cetera. Or a temporary screw  
10          configured to release or a temporary screw  
11          which will be released like in the Arthrodesis  
12          case. But that's not the way the claim is  
13          drafted.

14           And I think the take away from the  
15          case law is, it really matters how the claim  
16          is drafted. Here, the limitations are  
17          directed to the action performed by the user  
18          applying an axial force and the effect, the  
19          result of that action, which is that the  
20          temporary screw is released from the abutment.

21           THE COURT: All right. One big  
22          picture question for you is about the  
23          doctrine.

24           So, I understand the concept that if  
25          one claim recites both apparatus and

1                   functional language that the average reader  
2       may not have clear notice about when the  
3       infringement occurs and whether contributory  
4       infringement standards apply which can involve  
5       mens rea.

6                   If I, as the Court, were to simply  
7       construe -- construe these final limitations  
8       in claim one and claim nine as apparatus  
9       claims as part of claim construction, that can  
10      be done now or at a later stage, would that  
11      remove the ambiguity that you are arguing  
12      exists because now I construed the claims and  
13      that is claimed that res judicata, at least as  
14      to you, and perhaps judicial estoppel against  
15      the plaintiff if the plaintiff ever tries to  
16      argue in another case that that's functional  
17      language, it would have won this motion, but  
18      arguing otherwise it would presumably be  
19      estopped from ever denying that that is not  
20      functional language.

21                   So would that resolve the difficulty  
22      or does that not matter because you have to  
23      look at at the time the patent issued?

24                   MR. CHAPMAN: I think -- I have a  
25      two-fold response to that. First of all, the

1           patent owner who applies for the patent and  
2           pursues it chooses the claim language and  
3           there is many many cases that say that the  
4           courts are not empowered to rewrite the claim  
5           language except in various circumstances that  
6           I don't think apply here. It's not like it's  
7           a typo or it's obvious to one of ordinary  
8           skill that they should have used a different  
9           word.

10           And so I think the Court has to  
11           decide based on the plain and ordinary meaning  
12           of these words whether or not it comes within  
13           the scope of this doctrine. To construe them  
14           with the goal of avoiding the doctrine sounds  
15           to me like an attempt to rewrite the claim  
16           language, but I guess I don't fully know what  
17           the construction would be.

18           I would also point out that, for what  
19           it's worth, the plaintiff has not advocated  
20           that you do that. They are relying on the  
21           plain and ordinary meaning of the claim  
22           language. Apart from this issue, they have  
23           not identified any ambiguity or term that  
24           needs to be construed.

25           THE COURT: Let me also ask you

1           about the District of Delaware's decision in  
2 Acceleration Bay versus Activision Blizzard  
3 which addressed a definiteness issue in the  
4 district court, although the federal circuit  
5 did not.

6           In that case, the claim recited a  
7 computer network wherein an original --  
8 originating participant sends data to other  
9 participates and I gather that the participant  
10 is a human participant. The verb then is  
11 sends data.

12           Do you think that district court  
13 decision was just wrongly decided? Again,  
14 that's not precedential even within the  
15 District of Delaware, but I'm just curious.

16           Do you think that was a correct  
17 application of the doctrine or if you were  
18 counsel you would have taken an appeal to  
19 dispute that?

20           MR. CHAPMAN: Quickly looking at the  
21 decision, Your Honor. My reaction is that it  
22 was wrongly decided when you look at Katz and  
23 IPXL. Those cases look like they are  
24 directly on point because in both of those  
25 cases you have humans being required to do

1                   something under the claim language and that  
2                   appears to be the case in the Acceleration  
3                   Bay case if you are referring to term 38.

4                   THE COURT: Yes. My last question  
5                   for you is: I notice that your motion and  
6                   briefing is not making anything out of the  
7                   fact that the title of the patent is a screw  
8                   attached pick-up dental coping system and  
9                   methods.

10                  The abstract of the patent also says  
11                  in its first line, quote, a temporary  
12                  alignment system and methods.

13                  Is there a reason you are not doing  
14                  something with the use of methods as part of  
15                  the description of the patent in the abstract  
16                  and the title? Perhaps those are not legally  
17                  recognizable and I just don't know that.

18                  MR. CHAPMAN: I would say this: I  
19                  think it's interesting in informative context  
20                  here because this invention is all about this  
21                  procedure. Right. This is an apparatus  
22                  that's used in a dental procedure. And so  
23                  almost by definition, the description and as  
24                  we point out in our brief, the claim language  
25                  is all wrapped up in the method.

1                   I don't think the fact that the title  
2       in the abstract mentioned the method. I have  
3       not seen a case that points to that as being  
4       relevant under the case law, but it certainly  
5       is consistent with the overall point of this  
6       patent which is that it is a system for a  
7       dentist to use in this procedure.

8                   THE COURT: Okay.

9                   MR. CHAPMAN: Your Honor, one more  
10      thing we just wanted to point out is the  
11      coffee maker case. Hamilton Beach.

12                  I think this case is, again, I think  
13      the claim language is important and you have  
14      to really look at the claim language. I think  
15      this is the case that's most analogous to our  
16      case for two reasons.

17                  One, even though it does not mention  
18      the human in the claim, it does not talk about  
19      or cite a user, the Court still found the  
20      claims indefinite because when you read the  
21      limitation -- and this is up on the slide --  
22      it was clear that the claims require a human  
23      to do something. Mainly insert these brew  
24      baskets in to the machine.

25                  In the very same way, we argue that

1           our claims or the claims of the plaintiff's  
2        patent require a dentist to do something. To  
3        apply this force and that has to cause the  
4        temporary screw to be released from the  
5        abutment.

6           So we think that case is instructive  
7        because of the factual analogy.

8           THE COURT: All right. Very well.

9           Thank you, Mr. Chapman.

10           Mr. Nix, will you be arguing for the  
11        plaintiff?

12           MR. NIX: Yes. I will. Thank you  
13        very much, Your Honor.

14           THE COURT: All right. You may  
15        proceed.

16           MR. NIX: Thank you. So let me  
17        start by saying, first, we have a number of  
18        cases that give us a number of important  
19        principles to enable us to decide this issue.

20           One principle is that this hybrid  
21        doctrine is a very narrow doctrine. It's, as  
22        Your Honor I believe noted, it falls in  
23        disfavor and it's a very limited case. In  
24        essence, that's the way that Delaware  
25        characterizes the doctrine.

1                   Second, I would like to go back to  
2 the Acceleration Bay case that you talked  
3 about. That is a very important case that  
4 talks about a couple of the principles that  
5 would guide the analysis of the claim language  
6 here which I will get to in a moment.

7                   First, that case that even if the  
8 claim refers to a user action, even so, it  
9 assumes that there is a reference to a user  
10 action, the claim can only be found indefinite  
11 if it explicitly claims the act and not if it  
12 claimed only the system's capability to  
13 receive and respond to the user's action.

14                  And the second point that the  
15 Acceleration Bay case makes -- the second  
16 point the case makes is that system and  
17 apparatus claims are indefinite if they do  
18 functional language that is not specifically  
19 tied to structure, but instead appears in  
20 isolation.

21                  So what I would like to do, Your  
22 Honor, is look at the claim language that's at  
23 issue here in light of those two principles.

24                  One, that if you can refer to user's  
25 action because it's claiming the system's

1                   capability to respond to the user's action.

2                   And, second, functional language is  
3                   perfectly appropriate it is tied to the  
4                   structure.

5                   So does Your Honor have available the  
6                   facts of claim one?

7                   THE COURT: Yes. I'm looking at it.

8                   MR. NIX: Excellent. I would like  
9                   you to look at claim one. Claim one is  
10                  directed to the dental system that includes  
11                  four components: The implant abutment, a  
12                  coping and two different screws. A  
13                  definitive screw and a temporary screw. The  
14                  definitive screw is the one that's inserted  
15                  later and makes the -- to proceed with a  
16                  permanent installment.

17                  The temporary screw is the focus of  
18                  the motion. It's a very important part of the  
19                  invention as well.

20                  The claim describes the temporary  
21                  screw with both physical limitations and with  
22                  functional limitations. So the impact, the  
23                  claim describes the temporary screw as having  
24                  an axis, a link, a width, a proximal head  
25                  portion. Proximal being here in the direction

1 away from the patient's jaw and a distal  
2 portion that is in the direction towards the  
3 patient's jaw. So those are six physical  
4 limitations.

5 It also has two different functional  
6 limitations.

7 First, wherein the temporary screw is  
8 rotatable in the distal direction. That is  
9 rotating in to or toward the patient's jaw to  
10 engage the implant abutment.

11 The second functional limitation is  
12 the focus of the motion which recites and  
13 wherein an axial force in the proximal  
14 direction that is along the trans axis and  
15 away from the patient's jaw releases the  
16 temporary screw and the coping.

17 Now, as you note, that limitation  
18 does not recite or identify an actor who  
19 either rotates the temporary screw or exerts  
20 an axial force. Under the case law, that is  
21 an indication that the limitation is a  
22 functional limitation defining the capability  
23 of the structure. Not a method step.

24 In fact, that is exactly what we have  
25 here. These are functional limitations

1 defining the capabilities.

2 The screw, the temporary screw, is  
3 designed and structured so they can perform  
4 both functions. First, wherein it is  
5 rotatable and, second, wherein an axial force  
6 in a proximal direction, will release the  
7 screw.

8 And claim nine describes a temporary  
9 screw in a similar fashion where the male  
10 thread on the temporary screw release from the  
11 abutment thread in response to a, quote,  
12 predetermined axial pick-up force in a  
13 proximal direction.

14 Now, why did they claim this  
15 temporary screw in that fashion using  
16 functional limitation? We're all familiar  
17 with using ordinary-type screws, put screws to  
18 machine screw. Once you screw them in, they  
19 ordinarily stay in place unless you unscrew  
20 them. The temporary screws for this invention  
21 are a little bit different because the claim  
22 limitations in both claims nine and one recite  
23 that they release in response to an axial  
24 force in a proximal direction.

25 So what is important to take away --

1           one important take away from that claim  
2           language is that the act of exerting the axial  
3           force is not the key. The key is that the  
4           temporary screw has a specific structure that  
5           causes it to release in response to the axial  
6           force.

7                 A structure that satisfies this  
8           functional limitation would also satisfy the  
9           claim language. And we described in our  
10           opposition brief where the specification is  
11           not one or two, but multiple different  
12           structures that perform that function.

13                 It's widely accepted in patent claim  
14           drafting to define a structure with a  
15           functional limitation exactly as the inventors  
16           did here. The inventors claim their temporary  
17           screw with physical and functional  
18           limitations. That is very proper.

19                 And the functional limitation here is  
20           tied to a specific structure, so we can look  
21           at the cases and we can compare what claim and  
22           earlier cases that did or did not pass muster  
23           as to whether they're indefinite, but  
24           ultimately what we have to focus on is the  
25           specific claim language here.

1                   And the test is whether they use the  
2 language in the claim has been read by a  
3 person of the ordinary skill in the art, that  
4 is the central professional, whether that  
5 person would have reasonable certainty as to  
6 the scope of the invention.

7                   To find these claims as a whole to be  
8 indefinite one would have to conclude that a  
9 professional reading each claim, claims one  
10 and claim nine in their entirety would be so  
11 confused as to what the scope of the claim is  
12 that they would not know where or how  
13 infringement occurred.

14                   I submit to Your Honor that is simply  
15 not the case.

16                   THE COURT: Mr. Nix, may I ask you  
17 the same question that I asked Mr. Chapman,  
18 which is, if I conclude that the correct  
19 reading of the final clause of claim one and  
20 claim nine is that the clauses state a  
21 functional limitation on the apparatus and do  
22 not state a process itself, does that ruling  
23 because it would be necessary for you to win  
24 this motion estop your client from ever  
25 arguing on claim construction here or in

1 another case that these final two clauses of  
2 the two claims are, in fact, process claims?

3 MR. NIX: I believe, Your Honor,  
4 that it is certainly entitled at this stage  
5 to make a claim construction of a limited  
6 part of the claim that's required for you to  
7 resolve the motion to dismiss as an issue of  
8 law. And, you know, the plaintiff's position  
9 is that those two limitations are, in fact,  
10 functional limitations. They are not method  
11 steps and that claims as a whole are  
12 apparatus claims defining a dental system.

13 So, if that is Your Honor's claim  
14 construction, there may be an opportunity to  
15 appeal it or to challenge it later, but that  
16 would be -- as I think you noted in discussion  
17 with Straumann's counsel, that would be a  
18 ruling for the Court for purposes of this  
19 case.

20 THE COURT: Mr. Nix, let me ask you  
21 the same question I asked Mr. Chapman about  
22 the title of the patent, as well as the  
23 abstract.

24 MR. NIX: Yes.

25 THE COURT: They both refer to a

1 system and methods describing both a product,  
2 an apparatus, that being the system, and a  
3 process that being a method.

4 As you know in patent law, a method  
5 is the same as a process. So what am I  
6 supposed to do with that and does that  
7 actually help the defendant's argument that  
8 your claims, as drafted, cover aspects of both  
9 a system and a method?

10 MR. NIX: Your Honor, the use of the  
11 word "method" in the claim of the abstract  
12 and the description of method even in the  
13 specification lends zero weight to  
14 defendant's argument.

15 The determination of whether a claim  
16 is a method or an apparatus is placed on  
17 analyzing the claim itself. And, of course,  
18 given that attorneys who draft patents will  
19 include the word "method" and "apparatus"  
20 routinely in applications by the party  
21 abstract the descriptions and specification is  
22 that that specification serves as a predicate  
23 or basis for multiple sets of patent claims.

24 As it turns out, there is not a  
25 method claim in this patent because it could

1 very well be continuation or divisional  
2 applications that would be based on the same  
3 specifications that would include claims  
4 directed to methods, and so the fact that the  
5 word "method" is used in the title and the  
6 abstract does not indicate in any way that  
7 they're method claims or that they are even a  
8 method step in these claims.

22 I think you would have to agree that  
23 the federal circuit has held in Phillips that  
24 the specification is the single best guide to  
25 interpreting the claim language.

1                           So what am I supposed to do with  
2 those parts of the specifications saying that  
3 the patent discloses systems and methods?

4                           MR. NIX: The specification to the  
5 patent is disputed in described methods, Your  
6 Honor. But the claims that were allowed do  
7 not claim methods. These are all apparatus  
8 claims.

9                           THE COURT: Okay.

10                          MR. NIX: The specification would be  
11 appropriate support for different set of  
12 claims directed to the methods that are  
13 disclosed in the patent, absolutely.

14                          THE COURT: Sorry to interrupt you.  
15 Just to paraphrase. You're saying the  
16 specification discloses methods and maybe  
17 that would support a continuation patent that  
18 claims methods, but this patent claims only  
19 products, even though it discloses products  
20 and methods. That's what you are arguing?

21                          MR. NIX: Yes. That's absolutely  
22 right, Your Honor. As we talked about  
23 before, some of these claims include  
24 functional limitations which are still  
25 apparatus claims.

1 THE COURT: Okay. And what do you  
2 make of the plaintiff's reliance on cases  
3 like IPXL and the Hamilton Beach case where  
4 the claim either explicitly recites the user  
5 doing something or implicitly uses a verb  
6 without a clear subject but the implicit  
7 subject is a human, like the brewing machine  
8 being operated by a human? Do you think  
9 those are still --

10 MR. NIX: Again, the cases are --  
11 they define certain principles of law that  
12 ultimately each case would rise or fall based  
13 on the specific claim language in particular  
14 cases which, as Your Honor knows, is true in  
15 all cases.

16                   But it really goes back to what I  
17                   started with in Acceleration Bay and you can  
18                   certainly have activities performed by a user  
19                   in an apparatus claim and it will not be  
20                   confusingly vague or confusingly indefinite to  
21                   one of ordinary skill in the art if it  
22                   explicitly -- the term indefinite only  
23                   explicitly claims the user's account as  
24                   opposed to claiming the system's capability to  
25                   respond to the user's actions.

1                   Here in claim one it says, wherein an  
2 axial force to have proximal direction to  
3 loosen the coping of the temporary screw.  
4 This claim is explicitly defining what the --  
5 what the apparatus does in response to this  
6 very particular force. It does not claim --  
7 it does not claim the act itself. This is not  
8 a method step in a sequence of steps to brew  
9 coffee, for example, as in the coffee maker  
10 case that defendant relies on where the claims  
11 require the user to insert the brew baskets  
12 into the brewing machine, place the filter  
13 pack into the brewing reservoir, lift the lid  
14 to permit water to be freely poured into a  
15 water reservoir. Those are method steps.

16 That's a method claim. That is not our case.  
17 Our case --

18                   THE COURT: So, Mr. Nix, in that  
19 case, why didn't your client draft this final  
20 limitation to say, wherein the temporary  
21 screw is such that an axial force, yada yada  
22 yada? Why didn't they draft it to say the  
23 screw is of this nature? Why didn't they  
24 draft it to say, now I'm claiming an axial  
25 force releases the coping?

1 MR. NIX: There are multiple ways  
2 that patent attorneys can draft claims and  
3 the question isn't to necessarily parse  
4 exactly what the sequence reporting is. The  
5 test is how would a dental professional read  
6 and understand this entire claim starting  
7 with the dental system comprising and going  
8 all the way to the end.

23 Did you want to summarize, Mr. Nix?  
24 MR. NIX: Yes. Thank you, Your  
25 Honor.

1 So, to summarize, I would say that  
2 the cases give us the clear principles that I  
3 have described. When we look at the actual  
4 claim language, it is abundantly clear that  
5 the challenge limitation is a functional  
6 limitation. It is not a method step. And  
7 that would then be a part of the analysis and  
8 the end result analysis that we are  
9 challenging the definiteness of this entire  
10 claim under Section 112(b) and I submit that  
11 claims one and nine properly construe, at  
12 least inform those skilled in the art about  
13 the scope of the invention with reasonable  
14 certainty.

15 That's all the claim has to do is to  
16 inform one skilled in the art about the scope  
17 of the invention with reasonable certainty.

18 The flip side is they would have  
19 to -- defendants would have to show that there  
20 was a demonstrable confusion by a dental  
21 professional reading this claim about what the  
22 claims mean and when infringement occurs and I  
23 submit to Your Honor that wherein an axial  
24 force in a proximal direction releases the  
25 coping of the temporary screw is abundantly

1           clear, crystal clear, to one in the ordinary  
2       skill of the art and they would understand  
3       that that is defining the multiple different  
4       structures in the specification for how that  
5       temporary screw would be configured to release  
6       in response to that particular force.

7           Thank you, Your Honor.

8           THE COURT: Thank you, Mr. Nix.

9           Mr. Chapman, as you begin your reply  
10      argument, I have two questions for you and  
11      then I'll let you summarize as well.

12           On my first question, can I invite  
13      you to look at claim nine in the patent?

14           MR. CHAPMAN: If I may, Your Honor,  
15      if I could re-get control of the slides, I  
16      can show it to the Court.

17           THE COURT: All right. So I'm  
18      looking at claim nine and you are also  
19      displaying it on the power point.

20           So the final clause here, the one  
21      that you or your client is arguing makes this  
22      claim indefinite refers to the threads of the  
23      male threading of the post release from the  
24      threads of the female threading of the  
25      implants abutment with a predetermined axial

1 pick-up force in a proximal direction. Here  
2 is the language I want to emphasize. In  
3 response to and/or during pick-up processing.

4 Now, this claim does not separately  
5 claim that there is pick-up processing  
6 happening. That's not recited earlier, so  
7 this final phrase of the wherein clause seems  
8 to be using the future tense in the same way  
9 that the future tense was used in the  
10 Arthrodesis versus Wright Medical case that  
11 the District of Delaware held was definite.

12 What do you have to say to that idea?

13 MR. CHAPMAN: I don't think I agree  
14 with you that it's expressing this in the  
15 future tense. The verb "release" which is  
16 the active verb is present tense and the  
17 parties -- the verb release is the active  
18 verb in this clause and it is stated to be in  
19 the present tense.

20 And then I would say the last clause  
21 that you pointed out to, the one that says,  
22 "in response to and/or during pick-up  
23 processing" is describing when this is  
24 happening, but I don't agree that it is  
25 stating it in a way that it is happening in

1                   the future.

2                   I think, in fact, it reinforces our  
3 point here, which is that the axial pick-up  
4 force is applied by the user during pick-up  
5 processing and that causes the thread of the  
6 temporary screw to release, so you have an  
7 action by the user and it's causing something  
8 to happen and that's what the release clause  
9 is directed to.

10                  THE COURT: All right. Let me then  
11 ask my second question and invite you to look  
12 at claim one in the final clause of claim  
13 one.

14                  So I think the plaintiff is arguing  
15 that everything after wherein is a functional  
16 limitation. I noticed in the patent that this  
17 final wherein clause is not indented  
18 separately. This is true of claim nine as  
19 well. There is, as far as the indentation of  
20 the patent goes, there is one indent for the  
21 first wherein and the second wherein in terms  
22 of purely formatting of this document is  
23 contained within the same level of indentation  
24 as the entirety of the first wherein clause.

25                  Is that at least some visual cue that

1           the drafter was treating the axial force  
2           clause as a further refinement of the  
3           rotatable clause since they're both at the  
4           same level of indentation and then the reader  
5           would use that visual cue to understand that  
6           both of those clauses are modifications of the  
7           temporary screw?

8                   MR. CHAPMAN: No. The first part of  
9           that wherein clause actually uses claim  
10          language that would not be indefinite for  
11          this reason, because it's describing  
12          capability, the thread -- I'm sorry. The  
13          temporary screw is rotatable. That describes  
14          the characteristic of the temporary screw, a  
15          functional characteristic.

16                   This clause that we're focused on  
17          describes a different step in the procedure.  
18          A rotatable characteristic of the temporary  
19          screw is relevant to the fact that it can be  
20          inserted by the dentist at an earlier stage in  
21          the procedure using effectively a screwdriver  
22          to rotate the threads.

23                   This last limitation that we are  
24          looking at is directed to a subsequent step  
25          where the dentist is pulling it out. He's not

1                   unscrewing it. He's pulling it out.

2                   So I don't think formatting matters,  
3                   to be blunt.

4                   THE COURT: All right. Well, then,  
5                   let me give you a chance to just briefly  
6                   reply to the plaintiff's argument.

7                   MR. CHAPMAN: Certainly. I heard  
8                   counsel for the plaintiff say a couple things  
9                   that I just wanted to briefly respond to.

10                  One was, he invoked the classic  
11                  definiteness standard which is, is the claim  
12                  language reasonably clear to one of ordinary  
13                  skill in the art.

14                  I don't dispute that that's the  
15                  general standard for definiteness, but this  
16                  doctrine is a little bit unusual because it's  
17                  not focused on whether the claim language is  
18                  ambiguous or vague in a technical sense. It's  
19                  focused on whether you have an apparatus claim  
20                  which is one statutory class of a patentable  
21                  invention mixed up with a method step and  
22                  methods, of course, are a totally separate  
23                  statutory class of patentable invention under  
24                  Section 101.

25                  And because they are different

1                   classes, the way you look at infringement  
2                   issues and what constitutes an active  
3                   infringement is different for an apparatus  
4                   than for a method. And I think Your Honor  
5                   alluded earlier that you can get into issues  
6                   of whether there is contributory infringement  
7                   and the knowledge requirement that goes along  
8                   with that.

9                   So the focus here is not so much on  
10                  what one of ordinary skill look at the claims  
11                  and glean from them as a technical matter, so  
12                  much as a matter of law, does the claim mix  
13                  two different statutory classes of invention.  
14                  And I think that's an important principle to  
15                  keep in mind when you are looking at this.

16                  The second point I just wanted to  
17                  make clear -- and this goes back to the  
18                  Acceleration Bay case, the federal circuit has  
19                  not stated that you need to expressly recite a  
20                  user in the claim for this doctrine to apply.

21                  In the Master Mine case and other  
22                  cases they have distinguished Katz and IPXL on  
23                  that ground, but I'm not aware of any holding  
24                  that this doctrine -- that the claim language  
25                  has to expressly recite a user. In fact, the

1                   Hamilton Beach case that you pointed to  
2 demonstrates that.

3                   If you look at the claims in Hamilton  
4 Beach, which I put back up on the screen, they  
5 don't recite the user of the beverage brewing  
6 system. It's just clear. It's implicit, if  
7 you will, that the user of the brewing system  
8 is the one doing the inserting. And we would  
9 argue that the claims in this case are just  
10 like that. It's clear. There is no dispute  
11 about this, that it is the dentist who is  
12 using the dental system who applies this axial  
13 force and that that causes the temporary screw  
14 to release.

15                  So I just wanted to make sure that  
16 there was no suggestion that you had to  
17 expressly recite the user in the claim  
18 language.

19                  I don't have anything further, unless  
20 Your Honor has any questions.

21                  THE COURT: All right. Very well.  
22 Thank you, Mr. Chapman. Thank you, Mr. Nix.  
23 And thank you to all involved with this  
24 hearing for your flexibility to handle it by  
25 telephone with all the mechanical and

1           logistical challenges that involves. I  
2           appreciate that as well.

3                 With that, the motion is on  
4           submission and Court is adjourned.

5                     (At 12:04 p.m. proceedings were  
6           concluded.)

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4                   I, KIMBERLY A. BURSNER, Registered  
5 Professional Reporter, do hereby certify that  
6 the foregoing is an accurate transcript of the  
7 proceedings, as reported by me, in the  
8 case herein stated, and that I am neither  
9 counsel nor kin to any party or participant in  
10 said action, nor interested in the outcome  
11 thereof.

12

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15 Kimberly A. Bursner  
16 Registered Professional  
17 Reporter

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MR. CHAPMAN: [16] 3/8 3/20 4/5 7/14  
8/17 9/2 9/10 10/5 15/24 17/20 18/18  
19/9 35/14 36/13 38/8 39/7  
MR. NIX: [13] 3/12 20/12 20/16 22/8  
27/3 27/24 28/10 30/4 30/10 30/21  
31/10 33/1 33/24  
THE COURT: [30] 3/1 3/11 3/18 3/25  
6/23 8/6 8/21 9/5 10/1 14/21 16/25 18/4  
19/8 20/8 20/14 22/7 26/16 27/20 27/25  
29/9 30/9 30/14 31/1 32/18 33/19 35/8  
35/17 37/10 39/4 41/21

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1

101 [1] 39/24  
112 [1] 34/10  
11:13 [1] 1/16  
12 [1] 4/8  
124 [1] 3/3  
12:04 [1] 42/5  
13th [1] 1/15

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2

2005 [1] 8/10  
2011 [3] 8/10 8/10 9/3  
2012 [2] 8/12 8/22  
2015 [1] 9/7  
2016 [1] 8/13  
2017 [1] 8/12  
2024 [1] 1/16  
24-cv-507 [1] 1/4

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34 [1] 29/19  
38 [1] 18/3  
39 [1] 29/19

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507 [2] 1/4 3/3

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7

75 [1] 12/17

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A

a.m [1] 1/16  
about [14] 14/22 15/2 17/1 18/20 19/18  
21/3 21/4 27/21 30/22 33/11 34/12  
34/16 34/21 41/11  
absolutely [2] 30/13 30/21  
abstract [8] 18/10 18/15 19/2 27/23  
28/11 28/21 29/6 29/12  
abundantly [2] 34/4 34/25  
abutment [19] 4/18 10/15 10/24 11/5  
11/13 11/20 11/25 12/16 12/22 13/6  
13/14 13/24 14/20 20/5 22/11 23/10  
24/11 33/12 35/25  
Acceleration [6] 17/2 18/2 21/2 21/15  
31/17 40/18  
accept [1] 5/17  
accepted [1] 25/13  
according [1] 11/21  
account [1] 31/23  
accurate [1] 43/6  
act [5] 12/13 13/3 21/11 25/2 32/7  
action [14] 5/11 6/8 7/2 7/20 10/12 14/17  
14/19 21/8 21/10 21/13 21/25 22/1 37/7  
43/10  
actions [1] 31/25  
active [3] 36/16 36/17 40/2  
Activision [1] 17/2

activities [1] 31/18  
actor [1] 23/18  
actual [1] 34/3  
actually [3] 4/22 28/7 38/9  
add [1] 3/21  
addressed [1] 17/3  
adjourned [1] 42/4  
advocated [1] 16/19  
after [3] 8/14 11/22 37/15  
again [12] 8/10 9/16 9/23 12/5 12/21  
12/22 13/12 13/15 13/19 17/13 19/12  
31/10  
against [1] 15/14  
agree [3] 29/22 36/13 36/24  
ahead [1] 9/9  
alignment [1] 18/12  
all [23] 3/18 3/19 8/13 11/17 14/21 15/25  
18/20 18/25 20/8 20/14 24/16 29/9 30/7  
31/15 33/8 33/21 34/15 35/17 37/10  
39/4 41/21 41/23 41/25  
allowed [1] 30/6  
alluded [1] 40/5  
almost [1] 18/23  
along [2] 23/14 40/7  
also [10] 3/13 4/12 11/5 16/18 16/25  
18/10 23/5 25/8 29/20 35/18  
although [1] 17/4  
am [3] 28/5 30/1 43/8  
ambiguity [2] 15/11 16/23  
ambiguous [1] 39/18  
analogous [1] 19/15  
analogy [1] 20/7  
analysis [3] 21/5 34/7 34/8  
analyzing [1] 28/17  
Anderson [2] 2/4 3/17  
another [2] 15/16 27/1  
any [8] 8/7 8/15 8/21 16/23 29/6 40/23  
41/20 43/9  
anything [2] 18/6 41/19  
Apart [1] 16/22  
apparatus [22] 4/12 5/9 5/11 6/4 6/7 8/5  
9/20 14/25 15/8 18/21 21/17 26/21  
27/12 28/2 28/16 28/19 30/7 30/25  
31/19 32/5 39/19 40/3  
appeal [2] 17/18 27/15  
appearances [1] 3/7  
APPEARED [1] 2/1  
appears [2] 18/2 21/19  
application [3] 6/14 14/8 17/17  
applications [2] 28/20 29/2  
applied [2] 33/18 37/4  
applies [2] 16/1 41/12  
apply [8] 4/15 10/13 13/3 13/21 15/4  
16/6 20/3 40/20  
applying [3] 4/23 12/2 14/18  
appreciate [2] 9/11 42/2  
appropriate [2] 22/3 30/11  
are [48]  
argue [3] 15/16 19/25 41/9  
arguing [7] 15/11 15/18 20/10 26/25  
30/20 35/21 37/14  
argument [6] 7/12 28/7 28/14 33/22  
35/10 39/6  
arm [1] 9/22  
arrows [2] 12/1 12/11  
art [6] 26/3 31/21 34/12 34/16 35/2  
39/13  
Arthrodesis [3] 9/15 14/11 36/10  
as [50]  
ask [6] 6/24 16/25 26/16 27/20 29/9

37/11  
asked [2] 26/17 27/21  
aspects [1] 28/8  
asserted [1] 4/9  
associated [1] 12/7  
assumes [1] 21/9  
at [39] 1/16 5/6 7/15 8/19 9/24 11/1 11/2  
13/11 13/25 15/10 15/13 15/23 15/23  
17/20 17/22 19/14 21/22 21/22 22/7  
22/9 25/21 27/4 29/10 29/12 29/18 34/3  
34/11 35/13 35/18 37/12 37/25 38/3  
38/20 38/24 40/1 40/10 40/15 41/3 42/5  
attached [1] 18/8  
attachment [1] 29/16  
attempt [1] 16/15  
attorneys [2] 28/18 33/2  
available [1] 22/5  
average [2] 5/25 15/1  
avoiding [1] 16/14  
aware [1] 40/23  
away [6] 5/8 14/14 23/1 23/15 24/25  
25/1  
axial [31] 4/15 4/16 10/13 11/3 11/6 12/2  
12/22 13/4 13/4 13/12 13/15 13/17  
13/22 14/9 14/18 23/13 23/20 24/5  
24/12 24/23 25/2 25/5 32/2 32/21 32/24  
33/17 34/23 35/25 37/3 38/1 41/12  
axis [2] 22/24 23/14

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B

back [5] 13/1 21/1 31/16 40/17 41/4  
Barker [1] 1/14  
base [1] 9/23  
based [4] 5/3 16/11 29/2 31/12  
basic [1] 13/9  
basis [1] 28/23  
baskets [3] 5/25 19/24 32/11  
Bay [6] 17/2 18/3 21/2 21/15 31/17  
40/18  
be [32] 7/5 7/10 9/25 10/3 14/11 15/10  
15/18 16/17 16/24 18/2 20/4 20/10  
21/10 26/7 26/10 26/23 27/14 27/16  
27/17 29/1 29/2 29/15 30/10 31/19  
32/14 34/7 35/5 36/8 36/18 38/10 38/19  
39/3  
Beach [6] 5/22 7/24 19/11 31/3 41/1  
41/4  
because [28] 4/8 4/10 4/19 4/24 5/13  
5/19 5/24 6/12 6/20 8/4 8/8 8/23 9/18  
10/2 10/10 15/12 15/22 17/24 18/20  
19/20 20/7 21/25 24/21 26/23 28/25  
38/11 39/16 39/25  
been [5] 8/7 8/15 8/18 14/3 26/2  
before [2] 1/13 30/23  
begin [2] 4/3 35/9  
beginning [1] 5/4  
being [10] 7/2 8/25 8/25 14/8 17/25 19/3  
22/25 28/2 28/3 31/8  
believe [2] 20/22 27/3  
best [1] 29/24  
between [2] 7/8 8/24  
beverage [2] 9/7 41/5  
big [1] 14/21  
bit [2] 24/21 39/16  
Blizzard [1] 17/2  
blunt [1] 39/3  
both [11] 14/25 17/24 22/21 24/4 24/22  
27/25 28/1 28/8 29/16 38/3 38/6  
brew [4] 5/25 19/23 32/8 32/11  
brewing [6] 6/1 31/7 32/12 32/13 41/5

brewing... [1] 41/7  
 brief [6] 6/11 11/17 11/18 12/6 18/24  
 25/10  
 briefing [1] 18/6  
 briefly [3] 5/5 39/5 39/9  
 BURSNER [3] 1/25 43/4 43/14  
 but [19] 4/12 7/16 14/12 15/17 16/16  
 17/15 19/4 21/19 25/11 25/23 27/15  
 29/12 30/6 30/18 31/6 31/16 36/24  
 39/15 40/23

**C**

caller [1] 5/20  
 Campbell [1] 1/14  
 can [19] 3/6 6/23 10/3 11/18 12/1 15/4  
 15/9 21/10 21/24 24/3 25/20 25/21  
 29/15 31/17 33/2 35/12 35/16 38/19  
 40/5  
 cap [1] 12/10  
 capabilities [2] 6/13 24/1  
 capability [11] 6/6 6/21 7/11 8/4 10/3  
 14/2 21/12 22/1 23/22 31/24 38/12  
 capable [2] 14/5 14/7  
 case [51]  
 cases [23] 5/4 5/8 6/3 7/15 8/9 8/14 8/21  
 9/3 9/6 9/13 9/18 16/3 17/23 17/25  
 20/18 25/21 25/22 31/2 31/10 31/14  
 31/15 34/2 40/22  
 cause [2] 6/1 20/3  
 causes [4] 10/14 25/5 37/5 41/13  
 causing [1] 37/7  
 central [1] 26/4  
 certain [2] 7/4 31/11  
 certainly [5] 4/5 19/4 27/4 31/18 39/7  
 certainty [3] 26/5 34/14 34/17  
 certify [1] 43/5  
 cetera [1] 14/9  
 challenge [2] 27/15 34/5  
 challenges [1] 42/1  
 challenging [1] 34/9  
 chance [1] 39/5  
 change [1] 5/16  
 CHAPMAN [9] 2/9 3/9 4/2 6/23 20/9  
 26/17 27/21 35/9 41/22  
 characteristic [3] 38/14 38/15 38/18  
 characterizes [1] 20/25  
 chooses [1] 16/2  
 circuit [5] 5/4 8/22 17/4 29/23 40/18  
 circuit's [1] 8/7  
 circumstances [1] 16/5  
 cite [1] 19/19  
 cited [5] 6/3 6/10 8/9 8/14 9/15  
 claim [103]  
 claimed [3] 5/25 15/13 21/12  
 claiming [3] 21/25 31/24 32/24  
 claims [50]  
 class [2] 39/20 39/23  
 classes [2] 40/1 40/13  
 classic [1] 39/10  
 clause [13] 26/19 35/20 36/7 36/18  
 36/20 37/8 37/12 37/17 37/24 38/2 38/3  
 38/9 38/16  
 clauses [3] 26/20 27/1 38/6  
 clear [11] 15/2 19/22 31/6 34/2 34/4  
 35/1 35/1 39/12 40/17 41/6 41/10  
 clearly [1] 6/18  
 client [3] 26/24 32/19 35/21  
 co [1] 3/17  
 co-counsel [1] 3/17

coffee [4] 9/7 19/11 32/9 32/9  
 colleague [2] 3/16 3/21  
 column [3] 29/12 29/13 29/19  
 come [1] 8/13  
 comes [1] 16/12  
 compare [1] 25/21  
 complaint [1] 4/8  
 component [3] 9/20 9/23 9/23  
 components [4] 10/23 13/10 22/11 33/12  
 comprising [2] 10/23 33/7  
 computer [1] 17/7  
 concept [1] 14/24  
 conclude [2] 26/8 26/18  
 concluded [1] 42/6  
 configuration [3] 6/6 8/5 14/2  
 configured [4] 9/21 14/6 14/10 35/5  
 confused [1] 26/11  
 confusingly [2] 31/20 31/20  
 confusion [1] 34/20  
 connected [1] 11/20  
 consistent [1] 19/5  
 constitutes [1] 40/2  
 construction [5] 15/9 16/17 26/25 27/5  
 27/14  
 construe [4] 15/7 15/7 16/13 34/11  
 construed [2] 15/12 16/24  
 contained [1] 37/23  
 context [1] 18/19  
 continuation [2] 29/1 30/17  
 contributory [2] 15/3 40/6  
 control [1] 35/15  
 conversion [1] 11/10  
 CONVERSIONS [2] 1/4 3/4  
 coping [15] 10/25 11/4 11/11 11/19  
 11/25 12/9 12/14 13/5 18/8 22/12 23/16  
 32/3 32/25 33/13 34/25  
 correct [3] 10/5 17/16 26/18  
 COTTRELL [2] 2/2 3/15  
 could [2] 28/25 35/15  
 counsel [10] 2/1 3/6 3/15 3/17 3/23  
 17/18 27/17 33/21 39/8 43/9  
 couple [2] 21/4 39/8  
 course [3] 5/22 28/17 39/22  
 court [12] 1/1 4/6 9/6 9/16 15/6 16/10  
 17/4 17/12 19/19 27/18 35/16 42/4  
 courtroom [1] 3/8  
 courts [1] 16/4  
 cover [3] 4/11 12/20 28/8  
 crystal [1] 35/1  
 cue [2] 37/25 38/5  
 curious [1] 17/15  
 cv [2] 1/4 3/3

**D**

data [3] 5/21 17/8 17/11  
 database [2] 6/15 6/17  
 day [1] 1/16  
 decide [2] 16/11 20/19  
 decided [2] 17/13 17/22  
 decision [4] 5/5 17/1 17/13 17/21  
 defendant [5] 2/7 2/10 3/9 4/6 32/10  
 defendant's [2] 28/7 28/14  
 defendants [1] 34/19  
 define [2] 25/14 31/11  
 defined [1] 33/15  
 defining [5] 23/22 24/1 27/12 32/4 35/3  
 definite [1] 36/11  
 definiteness [4] 17/3 34/9 39/11 39/15  
 definition [1] 18/23  
 definitive [3] 10/24 22/13 22/14

DELAWARE [8] 1/2 3/4 3/14 3/23 5/23  
 5/25 20/24 36/11  
 Delaware's [1] 17/1  
 demonstrable [1] 34/20  
 demonstrates [1] 41/2  
 dental [16] 4/12 4/15 4/21 4/22 10/11  
 10/23 13/9 18/8 18/22 22/10 27/12 33/5  
 33/7 33/10 34/20 41/12  
 dentist [13] 4/14 10/12 11/11 12/2 12/14  
 12/23 13/2 13/21 19/7 20/2 38/20 38/25  
 41/11  
 denture [4] 1/4 3/4 11/10 12/3  
 denying [1] 15/19  
 describe [1] 14/1  
 described [5] 6/13 6/21 25/9 30/5 34/3  
 describes [6] 6/5 22/20 22/23 24/8 38/13  
 38/17  
 describing [7] 8/1 8/4 9/19 10/3 28/1  
 36/23 38/11  
 description [3] 18/15 18/23 28/12  
 descriptions [1] 28/21  
 designed [1] 24/3  
 determination [1] 28/15  
 device [2] 6/22 12/23  
 did [6] 17/5 24/14 25/16 25/22 25/22  
 33/23  
 didn't [3] 32/19 32/22 32/23  
 difference [1] 7/8  
 different [12] 7/5 16/8 22/12 23/5 24/21  
 25/11 30/11 35/3 38/17 39/25 40/3  
 40/13  
 difficulty [2] 15/21 33/10  
 digitally [1] 5/21  
 directed [7] 7/18 14/17 22/10 29/4 30/12  
 37/9 38/24  
 direction [10] 22/25 23/2 23/8 23/14 24/6  
 24/13 24/24 32/2 34/24 36/1  
 directly [1] 17/24  
 disclosed [3] 29/14 29/21 30/13  
 discloses [3] 30/3 30/16 30/19  
 discuss [1] 5/5  
 discussion [1] 27/16  
 disfavor [1] 20/23  
 dismiss [3] 3/2 4/7 27/7  
 displayed [1] 5/17  
 displaying [1] 35/19  
 dispute [3] 17/19 39/14 41/10  
 disputed [1] 30/5  
 distal [2] 23/1 23/8  
 distinction [2] 6/25 8/24  
 distinguished [1] 40/22  
 district [10] 1/1 1/2 3/3 5/23 9/6 17/1  
 17/4 17/12 17/15 36/11  
 divisional [1] 29/1  
 do [25] 5/1 7/19 8/6 8/9 8/15 8/21 10/7  
 14/6 16/20 17/12 17/16 17/25 19/23  
 20/2 21/17 21/21 26/21 28/6 30/1 30/6  
 31/1 31/8 34/15 36/12 43/5  
 doctrine [13] 5/2 5/3 7/21 14/23 16/13  
 16/14 17/17 20/21 20/21 20/25 39/16  
 40/20 40/24  
 document [1] 37/22  
 does [14] 8/19 15/22 19/17 19/18 22/5  
 23/18 26/22 28/6 29/6 32/5 32/6 32/7  
 36/4 40/12  
 doing [4] 8/1 18/13 31/5 41/8  
 don't [11] 8/17 16/6 16/16 18/17 19/1  
 36/13 36/24 39/2 39/14 41/5 41/19  
 done [1] 15/10  
 draft [5] 28/18 32/19 32/22 32/24 33/2

drafted [4] 14/4 14/13 14/16 28/8  
 drafter [1] 38/1  
 drafting [1] 25/14  
 drawing [1] 6/25  
 drift [3] 8/7 8/16 8/18  
 during [6] 4/16 13/18 13/22 36/3 36/22  
 37/4

**E**

each [2] 26/9 31/12  
 earlier [4] 25/22 36/6 38/20 40/5  
 easy [1] 10/1  
 effect [1] 14/18  
 effectively [1] 38/21  
 either [2] 23/19 31/4  
 electronic [1] 5/14  
 embodiment [2] 11/24 12/19  
 emphasize [1] 36/2  
 empowered [1] 16/4  
 enable [1] 20/19  
 end [5] 11/1 13/11 29/21 33/8 34/8  
 engage [1] 23/10  
 enter [1] 5/21  
 entire [2] 33/6 34/9  
 entirety [2] 26/10 37/24  
 entitled [1] 27/4  
 ESQ [1] 2/2  
 ESQUIRE [5] 2/4 2/5 2/7 2/9 2/9  
 essence [1] 20/24  
 estop [1] 26/24  
 estopped [1] 15/19  
 estoppel [1] 15/14  
 et [1] 14/9  
 even [7] 17/14 19/17 21/7 21/8 28/12  
 29/7 30/19  
 ever [3] 15/15 15/19 26/24  
 everything [1] 37/15  
 exactly [4] 7/16 23/24 25/15 33/4  
 example [3] 5/12 6/9 32/9  
 Excellent [1] 22/8  
 except [1] 16/5  
 excuse [1] 29/18  
 exerting [1] 25/2  
 exerts [1] 23/19  
 exists [1] 15/12  
 explains [1] 11/9  
 explicitly [5] 21/11 31/4 31/22 31/23 32/4  
 expressing [1] 36/14  
 expressly [3] 40/19 40/25 41/17

**F**

fact [9] 18/7 19/1 23/24 27/2 27/9 29/4  
 37/2 38/19 40/25  
 factor [1] 8/25  
 facts [1] 22/6  
 factual [1] 20/7  
 fall [4] 7/20 9/18 10/8 31/12  
 falls [2] 7/12 20/22  
 familiar [1] 24/16  
 far [1] 37/19  
 fashion [2] 24/9 24/15  
 federal [6] 5/4 8/7 8/22 17/4 29/23 40/18  
 female [1] 35/24  
 fields [1] 6/16  
 fifteen [1] 29/12  
 figure [5] 11/15 11/18 11/23 12/11 12/17  
 figures [2] 11/15 11/17  
 filter [1] 32/12  
 final [8] 15/7 26/19 27/1 32/19 35/20

36/7 37/12 37/17  
 financial [1] 5/14  
 find [1] 26/7  
 fine [2] 9/10 14/3  
 Finger [2] 2/2 3/16  
 firm [1] 3/16  
 first [12] 10/16 12/12 15/25 18/11 20/17  
 21/7 23/7 24/4 35/12 37/21 37/24 38/8  
 five [2] 11/15 11/18  
 flexibility [1] 41/24  
 flip [1] 34/18  
 focus [4] 22/17 23/12 25/24 40/9  
 focused [3] 38/16 39/17 39/19  
 fold [1] 15/25  
 FOLLOWS [1] 2/1  
 force [37] 4/16 4/17 4/23 10/13 11/3  
 11/6 12/1 12/2 12/22 13/4 13/4 13/13  
 13/16 13/17 13/22 14/9 14/18 20/3  
 23/13 23/20 24/5 24/12 24/24 25/3 25/6  
 32/2 32/6 32/21 32/25 33/17 33/18  
 34/24 35/6 36/1 37/4 38/1 41/13  
 foregoing [1] 43/6  
 formatting [2] 37/22 39/2  
 found [5] 7/10 8/23 9/17 19/19 21/10  
 four [4] 10/23 13/10 22/11 33/12  
 Fred [1] 3/15  
 FREDERICK [1] 2/2  
 freely [1] 32/14  
 fully [1] 16/16  
 function [1] 25/12  
 functional [22] 15/1 15/16 15/20 21/18  
 22/2 22/22 23/5 23/11 23/22 23/25  
 24/16 25/8 25/15 25/17 25/19 26/21  
 27/10 30/24 33/15 34/5 37/15 38/15  
 functions [1] 24/4  
 further [2] 38/2 41/19  
 future [5] 10/2 36/8 36/9 36/15 37/1

**G**

GARBER [2] 2/5 3/17  
 gather [1] 17/9  
 general [1] 39/15  
 generates [1] 6/17  
 GEORG [2] 2/9 3/21  
 get [5] 7/15 12/25 21/6 35/15 40/5  
 give [3] 20/18 34/2 39/5  
 given [1] 28/18  
 glean [1] 40/11  
 go [2] 9/9 21/1  
 goal [1] 16/14  
 goes [4] 31/16 37/20 40/7 40/17  
 going [5] 7/15 9/6 11/14 33/7 33/20  
 Good [3] 3/12 3/18 3/25  
 ground [1] 40/23  
 guess [1] 16/16  
 guide [2] 21/5 29/24

**H**

had [2] 7/1 41/16  
 Hamilton [6] 5/21 7/24 19/11 31/3 41/1  
 41/3  
 hand [1] 7/25  
 handheld [1] 6/22  
 handle [1] 41/24  
 happen [1] 37/8  
 happening [3] 36/6 36/24 36/25  
 has [23] 4/7 6/3 7/19 7/19 8/7 8/15 8/18  
 10/13 13/3 13/4 16/10 16/19 20/3 23/5  
 25/4 26/2 29/23 33/14 33/14 34/15  
 40/18 40/25 41/20

Haug [1] 2/8  
 have [37] 3/6 8/2 9/6 13/11 14/3 14/4  
 14/4 15/2 15/17 15/22 15/24 16/8 16/22  
 17/18 17/25 19/2 19/13 20/17 22/5  
 23/24 25/24 26/5 26/8 29/22 31/18 32/2  
 33/10 33/21 34/3 34/18 34/19 35/10  
 36/12 37/6 39/19 40/22 41/19  
 having [1] 22/23  
 he [3] 12/3 13/3 39/10  
 He's [2] 38/25 39/1  
 head [1] 22/24  
 heard [1] 39/7  
 hearing [3] 1/13 3/2 41/24  
 heat [1] 6/2  
 held [4] 1/13 1/15 29/23 36/11  
 help [1] 28/7  
 here [20] 3/1 7/16 10/17 12/17 14/16  
 16/6 18/20 21/6 21/23 22/25 23/25  
 25/16 25/19 25/25 26/25 32/1 35/20  
 36/1 37/3 40/9  
 hereby [1] 43/5  
 herein [3] 29/15 29/21 43/8  
 HOESCHEN [2] 2/7 3/23  
 hold [1] 6/4  
 holding [1] 40/23  
 Honor [22] 3/9 3/12 3/20 17/21 19/9  
 20/13 20/22 21/22 22/5 26/14 27/3  
 28/10 30/6 30/22 31/14 33/9 33/25  
 34/23 35/7 35/14 40/4 41/20  
 Honor's [1] 27/13  
 Honorable [1] 1/14  
 HOPE [2] 2/5 3/17  
 how [5] 9/19 14/15 26/12 33/5 35/4  
 HTC [1] 8/12  
 human [6] 8/24 17/10 19/18 19/22 31/7  
 31/8  
 humans [1] 17/25  
 hybrid [3] 4/11 5/2 20/20

**I**

I'll [1] 35/11  
 I'm [8] 11/14 17/15 22/7 32/24 33/20  
 35/17 38/12 40/23  
 idea [2] 12/21 36/12  
 identified [1] 16/23  
 identify [1] 23/18  
 if [25] 5/9 6/5 7/5 7/14 7/25 9/24 10/2  
 11/8 14/24 15/6 15/15 17/17 18/3 21/7  
 21/11 21/11 21/17 21/24 26/18 27/13  
 31/21 35/14 35/15 41/3 41/6  
 III [1] 2/2  
 image [1] 6/22  
 impact [1] 22/22  
 implant [6] 11/5 11/20 11/25 13/14 22/11  
 23/10  
 implants [2] 10/24 35/25  
 implicit [2] 31/6 41/6  
 implicitly [1] 31/5  
 important [7] 19/13 20/18 21/3 22/18  
 24/25 25/1 40/14  
 in [137]  
 inanimate [1] 7/9  
 include [4] 4/13 28/19 29/3 30/23  
 includes [2] 5/10 22/10  
 including [1] 4/23  
 indefinite [25] 4/9 4/10 4/25 5/9 5/13  
 5/19 5/24 6/5 6/12 6/20 7/22 7/22 8/3  
 8/23 9/17 10/10 19/20 21/10 21/17  
 25/23 26/8 31/20 31/22 35/22 38/10  
 indefiniteness [2] 5/3 7/13

indent [1] 37/20  
indentation [3] 37/19 37/23 38/4  
indented [1] 37/17  
independent [2] 10/19 13/8  
indicate [1] 29/6  
indication [1] 23/21  
inform [2] 34/12 34/16  
information [2] 5/16 7/4  
informative [1] 18/19  
infringed [1] 10/4  
infringement [8] 4/20 15/3 15/4 26/13  
34/22 40/1 40/3 40/6  
input [1] 5/15  
insert [3] 5/25 19/23 32/11  
inserted [2] 22/14 38/20  
inserting [1] 41/8  
installment [1] 22/16  
instead [2] 7/6 21/19  
instructive [1] 20/6  
interested [1] 43/10  
interesting [1] 18/19  
interphase [1] 5/20  
interpreting [1] 29/25  
interrupt [1] 30/14  
into [5] 5/25 32/12 32/13 32/14 40/5  
invention [9] 18/20 22/19 24/20 26/6  
34/13 34/17 39/21 39/23 40/13  
inventors [2] 25/15 25/16  
invite [2] 35/12 37/11  
invoked [1] 39/10  
involve [1] 15/4  
involved [1] 41/23  
involves [1] 42/1  
IPXL [6] 5/4 5/12 7/23 17/23 31/3 40/22  
is [181]  
isn't [1] 33/3  
isolation [1] 21/20  
issue [9] 8/8 8/20 10/6 11/2 16/22 17/3  
20/19 21/23 27/7  
issued [1] 15/23  
issues [2] 40/2 40/5  
it [71]  
it's [25] 4/19 9/3 10/2 12/6 12/22 13/9  
16/6 16/6 16/7 16/19 18/19 20/21 20/23  
21/25 22/18 25/13 33/16 36/14 37/7  
38/11 39/16 39/18 41/6 41/6 41/10  
its [2] 18/11 33/14  
itself [4] 8/5 26/22 28/17 32/7

## J

jaw [8] 11/12 12/4 12/24 23/1 23/3 23/9  
23/15 29/16  
JCB [1] 1/4  
jig [2] 9/22 9/23  
Judge [1] 1/15  
judicata [1] 15/13  
judicial [1] 15/14  
just [21] 8/4 9/12 9/13 10/16 10/17 11/14  
12/8 13/7 13/19 17/13 17/15 18/17  
19/10 29/11 30/15 39/5 39/9 40/16 41/6  
41/9 41/15

## K

Katz [5] 5/18 7/24 9/4 17/22 40/22  
keep [1] 40/15  
Keller [2] 2/6 3/24  
KELSEY [2] 2/4 3/13  
key [2] 25/3 25/3  
KIMBERLY [3] 1/25 43/4 43/14

kin [1] 43/9  
know [7] 14/5 14/7 16/16 18/17 26/12  
27/8 28/4  
knowledge [1] 40/7  
knows [1] 31/14

## L

language [36] 5/6 7/1 7/6 8/19 8/23 9/24  
10/17 11/16 15/1 15/17 15/20 16/2 16/5  
16/16 16/22 18/1 18/24 19/13 19/14  
21/5 21/18 21/22 22/2 25/2 25/9 25/25  
26/2 29/25 31/13 34/4 36/2 38/10 39/12  
39/17 40/24 41/18  
last [3] 18/4 36/20 38/23  
later [3] 15/10 22/15 27/15  
latest [1] 9/2  
law [8] 5/6 14/15 19/4 23/20 27/8 28/4  
31/11 40/12  
Layton [2] 2/2 3/16  
least [3] 15/13 34/12 37/25  
legally [1] 18/16  
lends [1] 28/13  
let [7] 16/25 20/16 27/20 29/9 35/11  
37/10 39/5  
level [2] 37/23 38/4  
lid [1] 32/13  
lift [1] 32/13  
lifting [1] 12/23  
light [1] 21/23  
like [14] 4/3 9/7 10/1 13/19 14/11 16/6  
16/15 17/23 21/1 21/21 22/8 31/3 31/7  
41/10  
limitation [28] 5/10 5/13 6/5 6/12 6/21  
9/19 10/10 11/2 11/3 13/1 13/11 13/12  
13/16 19/21 23/11 23/17 23/21 23/22  
24/16 25/8 25/15 25/19 26/21 32/20  
34/5 34/6 37/16 38/23  
limitations [17] 14/1 14/4 14/16 15/7  
22/21 22/22 23/4 23/6 23/25 24/22  
25/18 27/9 27/10 30/24 33/14 33/15  
33/16  
limited [2] 20/23 27/5  
line [7] 3/14 3/22 5/3 7/13 10/7 18/11  
29/18  
lines [2] 29/12 29/19  
link [1] 22/24  
little [2] 24/21 39/16  
LLC [2] 1/4 1/6  
LLP [2] 2/6 2/8  
local [2] 3/14 3/23  
logistical [1] 42/1  
look [18] 5/6 7/15 9/24 13/25 15/23  
17/22 17/23 19/14 21/22 22/9 25/20  
29/10 34/3 35/13 37/11 40/1 40/10 41/3  
looking [5] 17/20 22/7 35/18 38/24 40/15  
loosen [1] 32/3  
lower [1] 29/16

## M

machine [10] 6/1 6/1 8/1 8/25 9/7 9/8  
19/24 24/18 31/7 32/12  
made [1] 4/21  
Mainly [1] 19/23  
make [5] 3/7 27/5 31/2 40/17 41/15  
maker [2] 19/11 32/9  
makes [4] 21/15 21/16 22/15 35/21  
making [2] 9/13 18/6  
male [2] 24/9 35/23  
many [2] 16/3 16/3  
MARK [2] 2/9 3/9

Master [5] 6/9 6/24 8/2 8/11 40/21  
matter [3] 15/22 40/9 140/12  
matters [3] 8/18 14/15 39/2  
may [6] 4/6 15/2 20/14 26/16 27/14  
35/14  
maybe [1] 30/16  
me [10] 3/14 16/15 16/25 20/16 27/20  
29/9 29/19 37/10 39/5 43/7  
mean [1] 34/22  
meaning [2] 16/11 16/21  
means [1] 5/15  
mechanical [1] 41/25  
Medical [1] 36/10  
mens [1] 15/5  
mention [1] 19/17  
mentioned [1] 19/2  
merely [3] 6/5 9/19 14/1  
method [24] 4/13 4/14 4/19 18/25 19/2  
23/23 27/10 28/3 28/4 28/9 28/11 28/12  
28/16 28/19 28/25 29/5 29/7 29/8 32/8  
32/15 32/16 34/6 39/21 40/4  
methods [16] 18/9 18/12 18/14 28/1  
29/4 29/14 29/17 29/21 30/3 30/5 30/7  
30/12 30/16 30/18 30/20 39/22  
mind [1] 40/15  
Mine [5] 6/9 6/24 8/2 8/11 40/21  
mix [1] 40/12  
mixed [1] 39/21  
modifications [1] 38/6  
module [5] 6/13 7/2 7/3 7/9 8/3  
moment [1] 21/6  
more [3] 9/14 12/17 19/9  
morning [5] 3/1 3/12 3/18 3/25 5/1  
most [1] 19/15  
motion [12] 1/13 3/2 4/3 10/6 11/2 15/17  
18/5 22/18 23/12 26/24 27/7 42/3  
move [1] 11/14  
moved [1] 4/7  
Mr [6] 4/2 6/23 20/9 26/17 27/21 41/22  
Mr. [8] 20/10 26/16 27/20 32/18 33/23  
35/8 35/9 41/22  
Mr. Chapman [1] 35/9  
Mr. Nix [7] 20/10 26/16 27/20 32/18  
33/23 35/8 41/22  
much [3] 20/13 40/9 40/12  
multiple [4] 25/11 28/23 33/1 35/3  
must [1] 13/23  
muster [1] 25/22  
my [8] 3/16 3/21 9/13 10/16 17/21 18/4  
35/12 37/11

## N

namely [2] 6/14 10/12  
narrow [1] 20/21  
NATHAN [2] 2/7 3/23  
nature [1] 32/23  
necessarily [1] 33/3  
necessary [1] 26/23  
need [1] 40/19  
needs [1] 16/24  
neither [1] 43/8  
network [1] 17/7  
never [1] 10/3  
next [3] 11/14 12/5 13/8  
nine [12] 10/21 13/7 13/20 15/8 24/8  
24/22 26/10 26/20 34/11 35/13 35/18  
37/18  
nineteen [1] 29/13  
NIX [9] 2/4 3/13 20/10 26/16 27/20  
32/18 33/23 35/8 41/22

no [3] 38/8 41/10 41/16  
nor [2] 43/9 43/10  
not [54]  
note [1] 23/17  
noted [2] 20/22 27/16  
notice [3] 8/9 15/2 18/5  
noticed [1] 37/16  
November [1] 1/16  
now [9] 6/3 10/19 11/8 15/10 15/12  
23/17 24/14 32/24 36/4  
number [4] 3/3 10/20 20/17 20/18

---

## O

object [1] 7/9  
obvious [1] 16/7  
obviously [1] 10/6  
occurred [1] 26/13  
occurs [3] 4/20 15/3 34/22  
off [3] 12/3 12/10 12/23  
Okay [3] 19/8 30/9 31/1  
on [32] 1/15 3/2 3/14 3/22 5/3 7/12 7/25  
8/11 9/18 12/17 16/11 16/20 17/24  
19/21 24/10 25/24 26/21 26/25 28/16  
29/2 31/2 31/13 32/10 35/12 35/19  
38/16 39/17 39/19 40/9 40/22 41/4 42/3  
Once [1] 24/18  
one [44]  
ones [1] 9/3  
only [5] 4/21 21/10 21/12 30/18 31/22  
onward [1] 8/22  
opening [2] 11/18 12/6  
operated [1] 31/8  
opportunity [1] 27/14  
opposed [2] 6/7 31/24  
opposing [1] 33/21  
opposition [2] 6/11 25/10  
or [44]  
ordinarily [1] 24/19  
ordinary [9] 16/7 16/11 16/21 24/17 26/3  
31/21 35/1 39/12 40/10  
ordinary-type [1] 24/17  
original [1] 17/7  
originating [1] 17/8  
other [5] 7/25 13/8 17/8 29/10 40/21  
otherwise [1] 15/18  
our [15] 3/22 10/9 11/17 11/17 12/6  
12/18 12/25 13/19 18/24 19/15 20/1  
25/9 32/16 32/17 37/2  
out [8] 16/18 18/6 18/24 19/10 28/24  
36/21 38/25 39/1  
outcome [1] 43/10  
over [1] 8/8  
overall [1] 19/5  
owner [1] 16/1

---

## P

p.m [1] 42/5  
pack [1] 32/13  
paraphrase [1] 30/15  
parse [1] 33/3  
part [6] 15/9 18/14 22/18 27/6 34/7 38/8  
participant [4] 17/8 17/9 17/10 43/9  
participates [1] 17/9  
particular [4] 8/2 31/13 32/6 35/6  
parties [2] 3/7 36/17  
Partners [1] 2/8  
parts [2] 29/10 30/2  
party [2] 28/20 43/9  
pass [1] 25/22

passage [1] 12/7  
patent [29] 4/9 5/7 10/20 11/9 12/2  
12/19 12/20 15/23 16/1 16/1 18/7 18/10  
18/15 19/6 20/2 25/13 27/22 28/4 28/23  
28/25 30/3 30/5 30/13 30/17 30/18 33/2  
35/13 37/16 37/20  
patentable [2] 39/20 39/23  
patentee [2] 12/19 14/3  
patents [1] 28/18  
path [1] 11/23  
patient's [7] 11/12 12/4 12/24 23/1 23/3  
23/9 23/15  
perfectly [1] 22/3  
perform [7] 5/11 6/8 7/20 10/12 13/3  
24/3 25/12  
performed [2] 14/17 31/18  
perhaps [2] 15/14 18/16  
permanent [1] 22/16  
permit [1] 32/14  
person [2] 26/3 26/5  
Phillips [1] 29/23  
phrase [1] 36/7  
physical [5] 22/21 23/3 25/17 33/12  
33/14  
pick [16] 11/6 11/8 11/21 11/22 12/13  
13/13 13/18 13/22 18/8 24/12 36/1 36/3  
36/5 36/22 37/3 37/4  
pick-up [16] 11/6 11/8 11/21 11/22 12/13  
13/13 13/18 13/22 18/8 24/12 36/1 36/3  
36/5 36/22 37/3 37/4  
picking [1] 12/14  
picks [1] 11/11  
picture [1] 14/22  
place [2] 24/19 32/12  
placed [1] 28/16  
plain [2] 16/11 16/21  
plaintiff [12] 2/3 2/5 3/13 6/3 8/11 9/15  
15/15 15/15 16/19 20/11 37/14 39/8  
plaintiff's [6] 4/7 6/11 20/1 27/8 31/2  
39/6  
please [2] 3/7 4/6  
point [12] 7/16 16/18 17/24 18/24 19/5  
19/10 21/14 21/16 33/19 35/19 37/3  
40/16  
pointed [2] 36/21 41/1  
Pointer [2] 6/19 8/13  
pointing [1] 6/22  
points [1] 19/3  
portion [2] 22/25 23/2  
position [1] 27/8  
positioned [1] 9/25  
post [2] 13/14 35/23  
poured [1] 32/14  
power [1] 35/19  
precedential [1] 17/14  
predetermined [2] 24/12 35/25  
predicate [1] 28/22  
predicted [1] 5/16  
present [2] 36/16 36/19  
presentation [1] 4/4  
presented [2] 7/6 10/6  
presents [1] 6/15  
presumably [1] 15/18  
primary [1] 8/9  
principle [2] 20/20 40/14  
principles [5] 20/19 21/4 21/23 31/11  
34/2  
prior [1] 11/20  
procedure [7] 4/16 11/10 18/21 18/22  
19/7 38/17 38/21

proceed [2] 20/15 22/15  
proceedings [2] 42/9 43/7  
process [6] 11/21 11/23 26/22 27/2 28/3  
28/5  
processing [9] 11/7 11/8 12/13 13/18  
13/22 36/3 36/5 36/23 37/5  
product [1] 28/1  
products [2] 30/19 30/19  
professional [7] 26/4 26/9 33/5 33/10  
34/21 43/5 43/15  
prominently [1] 6/10  
proper [1] 25/18  
properly [1] 34/11  
protheses [1] 29/15  
prothesis [1] 12/9  
provides [1] 7/7  
providing [1] 7/11  
proximal [9] 22/24 22/25 23/13 24/6  
24/13 24/24 32/2 34/24 36/1  
proximate [1] 33/17  
prying [1] 12/3  
pulled [1] 12/10  
pulling [2] 38/25 39/1  
purely [1] 37/22  
purposes [1] 27/18  
pursues [1] 16/2  
put [2] 24/17 41/4

---

Q

question [8] 14/22 18/4 26/17 27/21 33/3  
33/20 35/12 37/11  
questions [2] 35/10 41/20  
quickly [2] 13/7 17/20  
quote [4] 18/11 24/11 29/20 29/21  
quoted [1] 12/6

---

R

re [1] 35/15  
re-get [1] 35/15  
rea [1] 15/5  
reaction [1] 17/21  
read [4] 11/8 19/20 26/2 33/5  
reader [2] 15/1 38/4  
reading [3] 26/9 26/19 34/21  
really [3] 14/15 19/14 31/16  
reason [2] 18/13 38/11  
reasonable [3] 26/5 34/13 34/17  
reasonably [1] 39/12  
reasons [1] 19/16  
receive [1] 21/13  
receives [2] 6/16 7/3  
receiving [1] 7/9  
recite [6] 23/18 24/22 40/19 40/25 41/5  
41/17  
recited [2] 17/6 36/6  
recites [4] 10/22 14/25 23/12 31/4  
recognizable [1] 18/17  
refer [2] 21/24 27/25  
reference [2] 21/9 29/17  
referring [1] 18/3  
refers [3] 21/8 29/20 35/22  
refinement [1] 38/2  
regarding [1] 6/24  
Registered [2] 43/4 43/15  
reinforces [1] 37/2  
REITBOECK [2] 2/9 3/22  
release [18] 4/17 10/14 11/4 13/5 13/13  
13/23 14/10 24/6 24/10 24/23 25/5 35/5  
35/23 36/15 36/17 37/6 37/8 41/14  
released [7] 11/25 12/15 12/21 14/8

released... [3] 14/11 14/20 20/4  
releases [5] 4/23 23/15 32/25 33/17  
34/24  
relevant [2] 19/4 38/19  
reliance [1] 31/2  
relies [1] 32/10  
relying [2] 8/11 16/20  
Rembrandt [1] 9/4  
remove [2] 11/12 15/11  
repeats [1] 12/8  
reply [2] 35/9 39/6  
reported [1] 43/7  
Reporter [2] 43/5 43/15  
reporting [5] 6/13 7/2 7/3 8/3 33/4  
require [3] 19/22 20/2 32/11  
required [5] 5/14 5/19 5/24 17/25 27/6  
requirement [1] 40/7  
requires [7] 4/14 5/10 10/11 11/3 13/2  
13/12 13/20  
requiring [1] 6/7  
res [1] 15/13  
reservoir [2] 32/13 32/15  
resolve [2] 15/21 27/7  
respect [1] 8/2  
respond [4] 21/13 22/1 31/25 39/9  
response [10] 13/16 13/17 15/25 24/11  
24/23 25/5 32/5 35/6 36/3 36/22  
result [4] 4/24 7/5 14/19 34/8  
rewrite [2] 16/4 16/15  
Richards [2] 2/2 3/15  
right [14] 3/18 7/17 9/5 14/21 18/21 20/8  
20/14 29/9 30/22 33/21 35/17 37/10  
39/4 41/21  
rise [1] 31/12  
rotatable [6] 23/8 24/5 33/16 38/3 38/13  
38/18  
rotate [1] 38/22  
rotates [1] 23/19  
rotating [1] 23/9  
routinely [1] 28/20  
RPR [1] 1/25  
Rule [1] 4/8  
ruling [2] 26/22 27/18

## S

said [4] 7/7 12/8 14/4 43/10  
same [12] 7/12 12/21 13/9 13/10 19/25  
26/17 27/21 28/5 29/2 36/8 37/23 38/4  
satisfies [1] 25/7  
satisfy [1] 25/8  
save [1] 33/20  
say [10] 8/20 16/3 18/18 32/20 32/22  
32/24 34/1 36/12 36/20 39/8  
saying [3] 20/17 30/2 30/15  
says [4] 18/10 29/13 32/1 36/21  
scope [6] 7/21 16/13 26/6 26/11 34/13  
34/16  
screen [1] 41/4  
screw [52]  
screwdriver [1] 38/21  
screws [5] 22/12 24/17 24/17 24/20  
33/13  
second [9] 21/1 21/14 21/15 22/2 23/11  
24/5 37/11 37/21 40/16  
Section [2] 34/10 39/24  
see [7] 7/23 7/23 7/24 9/5 10/22 11/18  
12/1  
seems [2] 10/1 36/7  
seen [1] 19/3

selectable [1] 6/15  
selection [1] 6/17  
sends [2] 17/8 17/11  
sense [1] 39/18  
sensor [1] 6/22  
sentence [1] 29/20  
separate [1] 39/22  
separately [2] 36/4 37/18  
sequence [2] 32/8 33/4  
serves [1] 28/22  
set [2] 6/15 30/11  
sets [1] 28/23  
seven [2] 29/12 29/13  
Shaw [2] 2/6 3/24  
she [2] 12/3 13/3  
should [2] 3/21 16/8  
show [5] 10/17 11/15 12/1 34/19 35/16  
shown [1] 12/10  
shows [1] 11/23  
side [4] 7/13 9/18 10/7 34/18  
similar [1] 24/9  
Similarly [2] 6/19 29/18  
simply [2] 15/6 26/14  
since [2] 4/2 38/3  
single [1] 29/24  
six [6] 11/15 11/23 12/11 23/3 29/18  
29/19  
skill [6] 16/8 26/3 31/21 35/2 39/13  
40/10  
skilled [2] 34/12 34/16  
slide [6] 10/17 11/15 12/5 12/17 13/8  
19/21  
slides [1] 35/15  
SMART [2] 1/4 3/4  
Smith [2] 2/4 3/17  
so [44]  
software [1] 6/14  
sold [1] 4/21  
some [5] 5/11 7/20 9/6 30/23 37/25  
someone [1] 4/22  
something [7] 7/10 18/1 18/14 19/23  
20/2 31/5 37/7  
sorry [2] 30/14 38/12  
sounds [1] 16/14  
specific [5] 8/19 25/4 25/20 25/25 31/13  
specifically [1] 21/18  
specification [12] 11/22 12/7 25/10  
28/13 28/21 28/22 29/11 29/24 30/4  
30/10 30/16 35/4  
specifications [2] 29/3 30/2  
stage [3] 15/10 27/4 38/20  
standard [2] 39/11 39/15  
standards [1] 15/4  
start [1] 20/17  
started [1] 31/17  
starting [1] 33/6  
state [2] 26/20 26/22  
stated [4] 7/3 36/18 40/19 43/8  
states [4] 1/1 11/5 13/15 13/17  
stating [1] 36/25  
statutory [3] 39/20 39/23 40/13  
stay [1] 24/19  
step [11] 4/13 4/14 4/19 11/9 23/23 29/8  
32/8 34/6 38/17 38/24 39/21  
steps [3] 27/11 32/8 32/15  
still [3] 19/19 30/24 31/9  
STRAUMANN [4] 1/6 3/5 3/10 4/7  
Straumann's [1] 27/17  
structure [8] 13/9 21/19 22/4 23/23 25/4  
25/7 25/14 25/20

structured [1] 24/3  
structures [2] 25/12 35/4  
subject [5] 7/1 7/7 8/25 31/6 31/7  
submission [4] 10/9 12/25 13/20 42/4  
submit [4] 26/14 33/9 34/10 34/23  
subsequent [1] 38/24  
such [1] 32/21  
suggestion [1] 41/16  
summarize [3] 33/23 34/1 35/11  
support [2] 30/11 30/17  
supposed [2] 28/6 30/1  
sure [1] 41/15  
system [26] 4/12 4/15 4/21 4/22 5/15  
5/20 7/11 10/11 10/13 10/23 13/2 13/10  
13/21 18/8 18/12 19/6 21/16 22/10  
27/12 28/1 28/2 28/9 33/7 41/6 41/7  
41/12  
system's [3] 21/12 21/25 31/24  
systems [3] 29/14 29/20 30/3

## T

take [4] 5/8 14/14 24/25 25/1  
taken [1] 17/18  
talk [1] 19/18  
talked [2] 21/2 30/22  
talking [1] 33/11  
talks [1] 21/4  
technical [2] 39/18 40/11  
teleconference [1] 1/15  
telephone [2] 5/20 41/25  
temporary [44]  
tense [6] 10/2 36/8 36/9 36/15 36/16  
36/19  
term [3] 16/23 18/3 31/22  
terms [1] 37/21  
test [2] 26/1 33/5  
than [1] 40/4  
thank [11] 3/11 4/5 20/9 20/12 20/16  
33/24 35/7 35/8 41/22 41/22 41/23  
that [223]  
that's [20] 9/10 11/2 14/12 15/16 17/14  
18/22 19/15 20/24 21/22 22/14 27/6  
29/17 30/20 30/21 32/16 34/15 36/6  
37/8 39/14 40/14  
their [3] 3/7 25/16 26/10  
them [5] 11/12 16/13 24/18 24/20 40/11  
then [14] 5/6 8/3 11/1 11/22 12/5 12/15  
13/10 17/10 34/7 35/11 36/20 37/10  
38/4 39/4  
there [21] 7/1 7/8 7/10 8/6 8/15 8/18  
10/19 16/3 18/13 21/9 27/14 28/24  
29/14 33/1 34/19 36/5 37/19 37/20 40/6  
41/10 41/16  
thereof [1] 43/11  
these [14] 7/15 11/16 14/1 14/4 15/7  
16/12 19/23 23/25 26/7 27/1 29/8 30/7  
30/23 33/12  
they [30] 4/11 4/12 5/19 5/24 7/20 7/21  
9/18 11/17 16/8 16/20 16/22 17/23  
21/17 24/3 24/14 24/18 24/23 26/1  
26/12 27/10 27/25 29/7 31/11 32/22  
32/23 34/18 35/2 39/25 40/22 41/4  
they're [4] 4/11 25/23 29/7 38/3  
thing [2] 7/12 19/10  
things [1] 39/8  
think [33] 7/5 7/14 7/18 8/6 8/15 8/17  
8/18 9/2 9/3 9/12 13/25 14/14 15/24  
16/6 16/10 17/12 17/16 18/19 19/1  
19/12 19/12 19/14 20/6 27/16 29/22  
31/8 33/21 36/13 37/2 37/14 39/2 40/4

think... [1] 40/14  
this [90]  
those [11] 17/23 17/24 18/16 21/23 23/3  
27/9 30/2 31/9 32/15 34/12 38/6  
though [2] 19/17 30/19  
thread [4] 24/10 24/11 37/5 38/12  
threading [2] 35/23 35/24  
threads [3] 35/22 35/24 38/22  
through [2] 9/13 29/13  
tied [3] 21/19 22/3 25/20  
time [2] 8/8 15/23  
title [6] 18/7 18/16 19/1 27/22 29/5 29/11  
totally [1] 39/22  
touch [1] 9/14  
toward [1] 23/9  
towards [1] 23/2  
trans [1] 23/14  
transaction [3] 5/15 5/16 5/17  
transcript [2] 1/10 43/6  
treating [1] 38/1  
treatment [1] 8/8  
tried [1] 12/20  
tries [1] 15/15  
true [2] 31/14 37/18  
turn [1] 10/16  
turns [1] 28/24  
two [15] 10/19 12/1 12/13 15/25 19/16  
21/23 22/12 23/5 25/11 27/1 27/2 27/9  
33/13 35/10 40/13  
two-fold [1] 15/25  
type [1] 24/17  
typo [1] 16/7

## U

U.S.A [1] 3/5  
ultimate [3] 6/19 7/16 8/12  
ultimately [2] 25/24 31/12  
uncertainty [1] 4/25  
unclear [1] 4/20  
under [6] 4/8 18/1 19/4 23/20 34/10  
39/23  
understand [4] 14/24 33/6 35/2 38/5  
understanding [2] 12/18 33/11  
UNITED [1] 1/1  
unless [2] 24/19 41/19  
unscrew [1] 24/19  
unscrewing [1] 39/1  
unusual [1] 39/16  
up [22] 11/6 11/8 11/11 11/21 11/22  
12/13 12/14 13/13 13/18 13/22 18/8  
18/25 19/21 24/12 36/1 36/3 36/5 36/22  
37/3 37/4 39/21 41/4  
upon [2] 9/14 14/8  
upper [1] 29/16  
us [3] 20/18 20/19 34/2  
USA [1] 1/6  
USDC [1] 1/14  
use [7] 5/15 13/21 18/14 19/7 26/1  
28/10 38/5  
used [5] 16/8 18/22 29/5 29/15 36/9  
user [31] 5/10 5/14 5/19 5/24 6/7 6/15  
6/16 7/4 7/6 7/7 7/11 7/19 7/19 8/24  
10/11 13/2 13/21 14/17 19/19 21/8 21/9  
31/4 31/18 32/11 37/4 37/7 40/20 40/25  
41/5 41/7 41/17  
user's [5] 21/13 21/24 22/1 31/23 31/25  
uses [3] 4/22 31/5 38/9  
using [7] 4/15 10/13 24/15 24/17 36/8  
38/21 41/12

Vague [2] 31/20 39/18  
various [1] 16/5  
verb [9] 7/1 7/2 9/1 17/10 31/5 36/15  
36/16 36/17 36/18  
verb is [1] 36/16  
versus [3] 3/4 17/2 36/10  
very [12] 13/7 19/25 20/8 20/13 20/21  
20/23 21/3 22/18 25/18 29/1 32/6 41/21  
via [1] 1/15  
visual [2] 37/25 38/5

## W

want [2] 33/23 36/2  
wanted [7] 5/1 5/5 9/14 19/10 39/9  
40/16 41/15  
was [20] 5/2 6/10 7/10 7/15 8/12 8/12  
8/13 9/12 9/12 9/12 17/13 17/16 17/22  
19/22 34/20 36/9 36/11 38/1 39/10  
41/16  
water [3] 6/2 32/14 32/15  
way [11] 9/6 9/13 13/25 14/12 19/25  
20/24 29/6 33/8 36/8 36/25 40/1  
ways [1] 33/1  
we [19] 7/23 7/23 7/24 13/25 18/24  
19/10 19/25 20/6 20/17 23/24 25/9  
25/20 25/21 25/24 30/22 34/3 34/8  
38/23 41/8  
we're [3] 3/1 24/16 38/16  
weight [1] 28/13  
well [13] 3/22 4/1 4/2 20/8 22/19 27/22  
29/1 33/19 35/11 37/19 39/4 41/21 42/2  
were [10] 5/13 5/18 5/23 6/11 6/20 9/17  
15/6 17/17 30/6 42/5  
what [27] 5/1 7/19 8/1 8/18 8/19 12/8  
16/16 16/18 21/21 23/24 24/25 25/21  
25/24 26/11 28/5 30/1 30/20 31/1 31/16  
32/4 32/5 33/4 34/21 36/12 37/8 40/2  
40/10  
when [13] 4/20 4/21 7/18 12/12 12/25  
15/2 17/22 19/20 33/17 34/3 34/22  
36/23 40/15  
where [11] 8/22 9/12 9/16 9/19 11/10  
24/9 25/10 26/12 31/3 32/10 38/25  
Whereas [1] 8/10  
wherein [15] 17/7 23/7 23/13 24/4 24/5  
32/1 32/20 34/23 36/7 37/15 37/17  
37/21 37/21 37/24 38/9  
whether [11] 4/20 12/3 15/3 16/12 25/23  
26/1 26/4 28/15 39/17 39/19 40/6  
which [30] 5/22 6/10 7/10 7/12 8/11 8/12  
8/13 8/13 9/14 9/25 10/7 12/8 12/8  
12/14 12/18 14/11 14/19 15/4 17/3 19/6  
21/6 23/12 26/18 30/24 31/14 36/15  
37/3 39/11 39/20 41/4  
who [7] 10/12 12/23 16/1 23/18 28/18  
41/11 41/12  
whole [2] 26/7 27/11  
why [4] 24/14 32/19 32/22 32/23  
widely [1] 25/13  
width [1] 22/24  
will [10] 9/25 10/16 14/11 20/10 20/12  
21/6 24/6 28/18 31/19 41/7  
win [1] 26/23  
within [4] 7/20 16/12 17/14 37/23  
without [1] 31/6  
won [1] 15/17  
word [4] 16/9 28/11 28/19 29/5  
words [1] 16/12  
worth [1] 16/19

would [41] 4/3 7/5 14/3 15/10 15/17  
15/18 15/21 16/1 16/7 18/17 18/18 18/18  
21/1 21/5 21/21 22/8 25/8 26/5 26/8  
26/10 26/12 26/23 27/16 27/17 29/2  
29/3 29/22 30/10 30/17 31/12 33/5  
33/10 34/1 34/7 34/18 34/19 35/2 35/5  
36/20 38/5 38/10 41/8  
wrapped [1] 18/25  
Wright [1] 36/10  
wrongly [2] 17/13 17/22

## Y

yada [3] 32/21 32/21 32/22  
Yes [7] 7/14 18/4 20/12 22/7 27/24  
30/21 33/24  
you [94]  
You're [1] 30/15  
your [38] 3/8 3/9 3/12 3/20 4/2 4/3 7/12  
8/9 8/14 17/21 18/5 19/9 20/13 20/22  
21/21 22/5 26/14 26/24 27/3 27/13 28/8  
28/10 30/5 30/22 31/14 32/19 33/9  
33/20 33/22 33/24 34/23 35/7 35/9  
35/14 35/21 40/4 41/20 41/24

## Z

zero [2] 28/13 33/10